Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Haynes	Analyst:	Jeff Garnier	Bill Number:	SB 981
Related Bills:	See Legislative History	Telephone:	845-5322	Introduced Date:	February 23, 2001
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Donations of Land to Affordable Housing Land Conservancy Credit

SUMMARY

This bill would allow a 20% credit for the donation of land to an affordable housing land conservancy.

PURPOSE OF THE BILL

The author's staff has indicated that the purpose of the bill is to create more affordable housing within the state and to encourage home ownership.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective for taxable years beginning on or after January 1, 2001. The credit would be operable for taxable years 2001 through 2005.

POSITION

Pending.

Summary of Suggested Amendments

The author's office has indicated that the bill in its present form is the framework of the credit. The bill will be amended to add sufficient detail to correct the implementation and technical considerations discussed below.

ANALYSIS

<u>FEDERAL/STATE LAW</u>

Existing state and federal laws allow deductions for charitable contributions to qualified charities and government agencies. Individuals generally can deduct amounts up to 30% of their adjusted gross income for contributions to qualified charities. Corporations can deduct amounts up to 10% of their taxable income.

Under federal law, taxpayers generally are allowed to deduct the fair market value (FMV) of property, including certain appreciated property contributed to a charitable organization, other than private foundations. However, in the case of a charitable contribution of inventory, other ordinary income property, or short-term capital gain property, the amount of the deduction is limited to the taxpayer's basis in the property.

Board Position:			Department Director	Date
______ S	______ NA	______ NP		
______ SA	______ O	______ NAR		
______ N	______ OUA	__X__ PENDING	**G. Alan Hunter for GHG**	**04/19/01**

The California Personal Income Tax Law (PITL) conforms to federal law for gifts of all types of property. Under the Bank and Corporation Tax Law (B&CTL), a taxpayer's charitable contribution deduction is limited to the taxpayer's adjusted basis in the property, regardless of the type of property donated.

Existing federal law allows a credit to an owner of a qualified low-income housing project that is constructed, rehabilitated, or acquired. The credit is claimed over a 10-year period that generally begins with the tax year the project is placed in service. The credit is claimed as part of the general business credit, which allows unused credits to be carried back one year and carried forward 20 years. The credit amount is based on the specified "applicable percentage" of the qualified basis of each qualified low-income building. The "applicable percentage" varies depending on several factors, including when the housing was placed in service and whether it was federally subsidized. A state authority, the California Tax Credit Allocation Committee (CTAC), oversees the process and allocates the credit. A qualified low-income housing project is any project for residential rental property that meets the specified requirements for low-income tenant occupancy and gross rent restrictions. The property must continually comply with all requirements throughout a 15-year compliance period or a portion of the credit must be recaptured.

Current state law conforms to the federal low-income housing credit with some modifications, as follows:

- The state credit is claimed over four years, rather than 10.
- The state credit is limited to projects located in California.
- The state credit specifies different "applicable percentages" upon which the amount of credit is computed.
- The CTAC is allowed to allocate an annual maximum of $50 million, plus unused or returned credit amounts from prior or current years. The CTAC provides listings of qualified taxpayers to the Franchise Tax Board.
- The state credit allows a corporation to assign any portion of the low-income housing credit to one or more affiliated corporations, provided the affiliation is 100% ownership.
- The state credit may reduce the regular tax below the tentative minimum tax for purposes of the alternative minimum tax calculation.
- The state credit may be carried over until exhausted if the credit exceeds the tax.
- The state credit is not subject to recapture.

Additionally, current state law allows a credit of up to 50% of the qualified amount of costs paid or incurred for construction or rehabilitation of qualified farmworker housing in California that satisfies the requirements of the Farmworker Housing Assistance Program. The amount of the credit is allocated by the CTAC in an amount necessary to make the project feasible, not to exceed 50% of eligible costs.

Finally, California law provides for a 55% credit of the value of property donated under the Natural Heritage Preservation Tax Credit Act of 2000. Strict requirements must be met to receive the credit. The donated property must be used as a type of wildlife refuge.

THIS BILL

For taxable years 2001 through 2005, this bill would provide for a credit equal to 20% of the fair market value of land permanently donated to an affordable housing land conservancy established in this state. The land may be developed or undeveloped.

The bill would define an "affordable housing land conservancy" as a conservancy established by a local government or by a non-profit corporation in this state. The conservancy would preserve land for the purpose of constructing affordable housing in accordance with affordable housing guidelines. The conservancy could be located in different jurisdictions in this state and the parcels of land held would not be required to be contiguous.

At least one acre of land must be contributed to a conservancy before a donor/taxpayer would be allowed a credit.

Any deduction otherwise allowed by the donation would be reduced by the amount of the credit.

The bill would define affordable housing land conservancy as a conservancy established by a non-profit corporation. A non-profit corporation is not necessarily exempt from taxation.

Any excess credit could be carried over for a period of six years.

IMPLEMENTATION CONSIDERATIONS

The bill does not specify the nature of the interest in the land that may be donated to receive a credit. Interest in land can be sold, transferred, or otherwise disposed of in several different manners (e.g., future or remainder interest). To avoid confusion, the author may desire to specify what type of interest in the property must be donated to the conservancy.

The bill does not provide any conditions to ensure that the land donated could not be converted to another use by the donee.

The term "fair market value" needs to be clarified. Consideration should be given to clarifying whether the fair market value refers to the fair market value of the land used for affordable housing or for the land's best use.

The term "affordable housing guidelines" is not defined.

It is unclear whether the one-acre contribution threshold, discussed above, applies to the minimum amount of land to be received by the conservancy or contributed by a single taxpayer.

TECHNICAL CONSIDERATIONS

The PITL section starts by stating what taxable years the credit will apply. The B&CTL section does not state what taxable years the credit applies. Although both law sections would be effective and operative for the same period, for consistency, the sections should read the same.

LEGISLATIVE HISTORY

SB 553 (Vincent 2001/2002) contains the same credit. SB 553 is to be heard by the Senate Revenue and Taxation Committee on April 25, 2001.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York laws do not provide a credit comparable to the credit allowed by this bill. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

This bill would not significantly impact departmental costs.

ECONOMIC IMPACT

This proposal is estimated to impact PIT and B&CT revenue as shown in the following table.

Fiscal Year Cash Flow Impact Effective 1/1/01 Assumed Enactment After 6/30/01 $ Millions			
Assumption	2001-02	2002-03	2003-04
$25 Million In Donated Property	($2.5)	($5)	($5)
$50 Million In Donated Property	($5)	($10)	($10)
$100 Million In Donated Property	($10)	($20)	($20)

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

The revenue impact for this bill will be determined by the value of property that might be donated in any given year and the tax liabilities of donors for applying tax credits.

This estimate was developed in the following steps. First, three possible total fair market value donation amounts were assumed $100, $50 and $25 million in qualified property, for each fiscal year. Second, the amount of credit is 20 percent of the fair market value. Third, it is estimated that contributors will be able to use 95 percent of the qualified credit; five percent of the generated credit will never be applied. For calendar year 2001, it is estimated that donations will be made during the last six months of the year, due to the projected enactment date and timeframes for establishing the affordable housing land conservancies. It is assumed that many of the taxpayers donating property under the provisions of this bill would have held the property for long periods of time and would not have sold or donated the property except for combined incentive provided by this bill and federal law. Thus, the amount of gains that would otherwise have been reported on sales of the property is unknown, but is not expected to be particularly significant.

ARGUMENTS/POLICY CONCERNS

There is not a requirement in the bill that affordable housing must be built or made available to low (or moderate) income individuals.

LEGISLATIVE STAFF CONTACT

Jeff Garnier	Brian Putler
Franchise Tax Board	Franchise Tax Board
845-5322	845-6333